

175:20-5-7. Disqualifying criminal history and opportunity for initial determination [AMENDED]

(a) Pursuant to 59 O.S. § 4000.1, the Board of Cosmetology and Barbering shall adopt a list of crimes that could disqualify a person from being licensed as a massage therapist. The Board shall adopt the list at its first meeting of the fiscal year and may modify the list as needed to protect public health and safety.

(b) The misdemeanors and felonies in the list could disqualify an individual because they substantially relate to the practice of massage therapy and pose a reasonable threat to public safety, health or welfare, as explained below.

(1) **Crimes involving fraud, theft, lying, falsification and/or deception.** Licensees may have unfettered access to their clients' financial information and valuables, including credit cards, checks, cash and jewelry. They also may have access to personal health information, from clients who disclose relevant health conditions or medications before treatment, including, for example, on intake forms. Massage therapy often occurs in a room where there is no direct supervision of the licensee, and where the client is in a state of undress and physically separated from his or her valuables. As a result, crimes involving fraud, theft, lying, falsification and/or deception are highly relevant to an individual's ability to provide safe massage therapy services.

(2) **Crimes involving violence and/or threatening behavior, including sexual misconduct.** Massage therapists frequently provide services to partially clothed or fully undressed clients, who are particularly vulnerable to exploitation. On the other hand, local news articles often report on police raids on massage establishments that involve prostitution or human trafficking. As a result, crimes involving violence and/or threatening behavior, including sexual misconduct, are highly relevant to an individual's ability to provide safe massage therapy services.

~~(b)~~(c) A person who has pleaded guilty, nolo contendere or been convicted of a crime on the list, or who has a criminal charge currently pending, may at any time, including before obtaining any required education or applying to sit for any necessary examination, request an initial determination as to whether the person's criminal history would potentially disqualify the individual from licensure as a massage therapist in Oklahoma. The request shall be in writing and shall include either a copy of the person's criminal history record; or a statement describing each conviction or plea, including the date of conviction or plea, the court of jurisdiction, and the sentence imposed. The person may submit any additional information, including, but not limited to, information relevant to the person's current circumstances, the length of time since the completion of any sentence, including probation, evidence of rehabilitation, and testimonials or personal reference statements, as well as the person's professional aspirations

(1) The nature and seriousness of the offense;

(2) The amount of time that has passed since the offense;

(3) The age of the person at the time the offense was committed;

(4) Circumstances of the offense, including aggravating or mitigating circumstances of social conditions surrounding the commission of the offense;

(5) The nature of the specific duties and responsibilities for which the license is required; and

(6) Rehabilitation, including, among other things, evidence related to the person's compliance with conditions of community supervision, parole or mandatory supervision; the conduct and work activity of the person; programming or treatment undertaken by the person; and testimonials or personal reference statements.

~~(c)~~(d) Upon receipt of a written request for consideration of a person's criminal history record, the Executive Director, the Chair of the Board of Cosmetology and Barbering, and the Chair of the

Advisory Board, in consultation with Board legal counsel, shall evaluate the request and make an initial determination based upon the information provided. A notice of initial determination shall be issued within sixty (60) days from the date the request was received. If the person is not satisfied with the response, the person may request that the matter be ~~placed on the agenda of the Board's next regularly scheduled meeting~~ set for hearing, consistent with the Board's rules of practice, in OAC 175:1-5.

~~(d)~~(e) The notice of initial determination shall be in writing and mailed to the requestor at the address provided in the request, and shall contain the following statements:

- (1) Whether the person ~~appears~~ is eligible for licensure at the current time based upon the information submitted by the requestor;
- (2) Whether there is a disqualifying offense ~~prohibiting that would disqualify the person's licensure~~ preventing a person from engaging in massage therapy at any the current time and a statement identifying such offense in the criminal history record or information submitted for consideration;
- (3) Any actions the person may take to remedy ~~what appears to be a temporary~~ disqualification, if any;
- (4) The earliest date the person may submit another request for consideration, if any; and
- (5) A statement that the ~~notice of initial determination is only an initial determination for eligibility for licensure based upon the information provided by the requestor~~ may be rescinded if, at the time a full application for a license is submitted, the applicant has subsequently pled guilty or nolo contendere to a crime, has pending criminal charges or has previously undisclosed criminal convictions. Additional information or intervening events may result in a different final determination.

~~(e)~~(f) A person who has pleaded guilty, nolo contendere or been convicted of a crime on the list adopted by the Board pursuant to this section, or who has a criminal charge currently pending, ~~shall~~ may not be eligible for licensure for a period of ~~three~~ at least five (5) years from the date of ~~the conviction, plea or conviction~~ release from incarceration, whichever is later. ~~Applicants whose pleas or convictions occurred more than three years prior to the date of application for licensure shall be evaluated on a case-by-case basis.~~

(g) To obtain an initial determination, the required form shall be completed and filed with the Board, along with a non-refundable ninety-five dollar (\$95.00) fee; provided, however, a person requesting an initial determination who presents satisfactory evidence that he or she is a low-income individual pursuant to OAC 175:20-15-1, shall be entitled to a one-time waiver of the ninety-five dollar (\$95.00) fee.

(h) The Executive Director is authorized to close a file requesting initial determination of eligibility when the person seeking determination of eligibility for licensure has failed to respond to a written request from the Board for information, within forty-five (45) days of the written request.

175:20-11-1. Grounds for discipline [AMENDED]

(a) The Board may take the following disciplinary action against a licensee:

- (1) ~~refuse~~ Refuse to renew a license;
- (2) ~~suspend~~ Suspend or revoke a license;
- (3) ~~issue~~ Issue an administrative reprimand; or
- (4) ~~impose~~ Impose probationary conditions.

(b) The Board may take disciplinary action upon a finding that the licensee has:

- (1) ~~pleaded~~ Pleaded guilty, nolo contendere or been convicted of or charged with a misdemeanor or felony crime that substantially relates to the practice of massage therapy and poses a reasonable threat to public safety;

- ~~(2) pleaded guilty, nolo contendere or been convicted of a misdemeanor involving moral turpitude;~~
~~(3) pleaded guilty, nolo contendere or been convicted of a violation of federal or state controlled dangerous substance laws.~~
~~(4)~~(2) ~~violated~~Violated any provision of the Massage Therapy Practice Act or any rule of the Board;
~~(5)~~(3) ~~engaged~~Engaged in any unprofessional conduct; or
~~(6)~~(4) ~~been~~Been the subject of disciplinary action in another jurisdiction;

175:20-15-1. Massage Therapy Practice Act license and penalty fees [AMENDED]

- (a) The following license and penalty fees are hereby adopted:
- ~~(1) Massage Therapist License (prior to May 1, 2017) - \$25.00~~
 - ~~(2) Massage Therapist License (after May 1, 2017) - \$50.00~~\$100.00. Per 59 O.S. § 4200.9, massage therapy licenses expire biennially.
 - ~~(3)~~(2) Massage Therapist License by Reciprocity - \$65.00
 - ~~(4)~~(3) License Renewal - ~~\$50.00~~\$100.00
 - ~~(5)~~(4) Duplicate license (in case of loss or destruction of original license and/or renewal application) - ~~\$5.00~~\$10.00
 - ~~(6)~~(5) Notary Fee - \$1.00
 - ~~(7)~~(6) Certification of Records - \$10.00
 - ~~(8)~~(7) Late fee (for licenses renewed during the one-month grace period) - \$10.00
- (b) All fees shall be submitted to the Board in the form of a cashier's check, money order or business check. Personal checks are not accepted by the Board.
- (c) Pursuant to the provisions of 59 O.S. § 4003A, upon presentation of satisfactory evidence that an applicant for initial licensure or certification, or that a licensee or certificate-holder seeking renewal, is a low-income individual, the Board shall grant a one-time one-year waiver of the fee for licensure, certification or renewal. A low-income individual is a person who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line. An applicant for licensure must provide documentation showing participation in one of the afore-mentioned programs or submit income tax returns showing income below the established threshold. The documentation must be current and must be issued by the federal or state entity administering the program. Copies of income tax returns must be from the most recent tax year prior to the date of licensure application.